

State of South Dakota

EIGHTY-EIGHTH SESSION LEGISLATIVE ASSEMBLY, 2013

781U0067

HOUSE BILL NO. 15

Introduced by: _____

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the termination of
2 certain mineral interests.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 43-30A-3 be amended to read as follows:

5 43-30A-3. A mineral interest is deemed to be used if:

6 (1) Minerals are produced under that interest;

7 (2) Operations are conducted thereon for injection, withdrawal, storage, or disposal of
8 water, gas, or other fluid substances;

9 (3) In the case of solid minerals, there is production from a common vein or seam by the
10 owners of the mineral interest;

11 (4) Any conveyance, valid lease, mortgage, assignment, order in an estate settlement
12 proceeding, inheritance tax determination affidavit, termination of life estate
13 affidavit, or any judgment or decree that makes specific reference to the mineral
14 interest is recorded in the office of the register of deeds for the county in which the
15 mineral interest is located;

16 (5) The mineral interest is subject to an order or an agreement to pool or unitize;



(6) Taxes are paid on the mineral interest on behalf of the owner;

(7) A statement of claim is recorded in compliance with § 43-30A-4; or

~~(8) Its owner or lessee uses the mineral interest in a manner pursuant to, or authorized by, the instrument creating the mineral interest; or~~

~~—(9)—~~ A proper instrument describing the mineral interest has been recorded prior to an affidavit recorded under prior law pursuant to § 43-30-7, in the office of the register of deeds for the county in which the mineral interest is located.

Section 2. That § 43-30A-4 be amended to read as follows:

43-30A-4. A statement of claim shall:

(1) Be recorded for the owner of the mineral interest prior to the end of the twenty-three-year period set forth in § 43-30A-2, ~~or within two years after July 1, 1985, whichever is later.~~ A joint tenant, but not a tenant in common, may record a claim on behalf of himself and other joint tenants;

(2) Contain the name and address of the owner of the mineral interest and a legal description of the land on or under which the mineral interest is located;

(3) Be recorded in the office of the register of deeds for the county in which the mineral interest is located.

A mineral interest is deemed to be in use on the date of recording if the recording is made within the time provided by this section. A statement of claim filed after July 31, 2013, by a person other than the owner of record of the mineral interest is not effective to preserve a mineral interest unless accompanied by a reference to the name of the record owner under whom the owner of the mineral interest claims.

Section 3. That § 43-30A-5 be amended to read as follows:

43-30A-5. Failure to record the statement of claim within the time period provided in § 43-

30A-4 does not cause a mineral interest to be extinguished if ~~the owner of the mineral interest~~
~~meets all of the following requirements:~~

~~(1) Owns one or more mineral interests in the county in which the mineral interest in~~
~~question is located at the time of the expiration of the time period provided in § 43-~~
~~30A-4;~~

~~(2) Inadvertently failed to preserve the mineral interest in question; and~~

~~(3) Within sixty days after completion of the publication of the notice provided for in~~
~~§ 43-30A-6, recorded a statement of claim;~~

(1) The owner of record of the mineral interest satisfies either one of the following
requirements within sixty days after first publication of the notice provided for in
§ 43-30A-6:

(a) Files with the county register of deeds a statement of claim as required in § 43-
30A-4; or

(b) Files with the county register of deeds documentation that at least one of the
activities under § 43-30A-3 took place during the twenty-year period
immediately preceding the first publication of notice;

(2) A person other than the owner of record of the mineral interest files with the county
register of deeds within sixty days after the first publication of the notice provided
for in § 43-30A-6 an affidavit under oath or a declaration under oath which includes
an explanation of the factual and legal basis for the person's assertion of title to the
mineral interest. This explanation shall be accompanied by documentation supporting
the assertion or an explanation why documentation is unavailable.

Section 4. That chapter 43-30A be amended by adding thereto a NEW SECTION to read
as follows:

1 The surface owner of the land in or under which the mineral interest is located who succeeds
2 to the ownership of a mineral interest upon its lapse under this chapter is entitled to record a
3 statement of succession in interest indicating that that surface owner of the land in or under
4 which the mineral interest is located has succeeded to the ownership of the mineral interest.

5 Section 5. That chapter 43-30A be amended by adding thereto a NEW SECTION to read
6 as follows:

7 To constitute a reasonable inquiry as provided in § 43-30A-6, the surface owner or the
8 owner's authorized agent shall conduct a search of:

- 9 (1) The county register of deed's records for the existence of any uses as defined in § 43-
10 30A-3 by the owner of the mineral interest;
- 11 (2) The Unified Judicial System's records for the existence of any judgments, liens, or
12 probate records which identify the owner of the mineral interest;
- 13 (3) The social security death index for the last-known residence of the owner of the
14 mineral interest, if deceased; and
- 15 (4) One or more public internet databases to locate or identify the owner of the mineral
16 interest or any known heirs of the owner. The surface owner is not required to
17 conduct internet searches on private fee internet databases.

18 Section 6. That chapter 43-30A be amended by adding thereto a NEW SECTION to read
19 as follows:

20 Upon completion of the procedure provided in chapter 43-30A, the surface owner may
21 maintain an action in district court in the county in which the minerals are located and obtain
22 a judgment in quiet title in the owner of the surface estate. In an action brought under this
23 section, the surface owner shall submit evidence to the district court establishing that all
24 procedures required by this chapter were properly completed and that a reasonable inquiry was

1 conducted. If the district court finds that the surface owner has complied with all procedures of
2 this chapter and has conducted a reasonable inquiry, the district court shall issue its findings of
3 fact, conclusions of law, and enter judgment perfecting title to the mineral interest in the surface
4 owner.

5 A judgment obtained by the surface owner in compliance with this section is deemed
6 conclusive except for fraud, misrepresentation, or other misconduct.

7 A mineral lessee that obtains a lease from the surface owner, which owner has obtained a
8 judgment to minerals pursuant to this section, is deemed a bona fide purchaser and its lease
9 remains effective in the event the judgment is subsequently vacated for any reason. The lessee
10 is not liable to any third party for lease bonus, royalties, or any other proceeds paid to the surface
11 owner under the lease before the judgment being vacated.